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# A DISCOURSE CONCERNING RIOTS.

Occaſioned by ſome of the People called *QUAKERS*, being Impriſoned and Indicted for a *RIOT*, for only being at a peaceable Meeting to Worſhip *GOD*.

Written by one of that People,
*THOMAS ELLWOOD.*

*Thou ſhalt not* Wreſt *Judgment*, Deut. 16. 19.
*If thou ſeeſt the Oppreſſion of the Poor, and violent* Perverting *of Judgment and Juſtice in a Province, marvel not at the matter: for he that is higher than the higheſt, regardeth, and there be higher than they*, Eccl: 5. 8.

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# The Occaſion of this Diſcourſe.

*THE Proceedings of late, in City and Country, againſt ſome of the People called* Quakers, *for Riots, for only Meeting peaceably together to ſerve and worſhip God, firſt put me upon inquiring into the Nature of Riots. What upon that Inquiring I have found I here preſent to publick view, for common benefit, that none through ignorance may be occaſion of bringing an unjuſt ſuffering upon an innocent People, and thereby Guilt upon themſelves. I do not pretend much skill in Law (a Study and Profeſſion I was never bred to) But having ſpent ſome hours on this Occaſion, in ſearching what the Law-Books ſay in this Caſe, I hope I may (without incurring the Cenſure of Preſumption) communicate my Gleanings to ſuch of my well-meaning Country-men, as have not leiſure or opportunity to inform themſelves otherwiſe. I ſolemnly declare I have no other end or aim in this Work, than to do Good and prevent Evil: Which Conſideration, with men of Candour and Ingenuity, will be, I hope, a ſufficient Apology for any ſeeming boldneſs in this Undertaking.*

# *A Diſcourſe concerning Riots*, &c.

THat the Nature of a *Riot* may be the better underſtood, I intend to obſerve this Method.

1. To ſet down the ſtrict and proper Signification of the word.
2. To Inquire what the Statute Law ſays concerning it.
3. To obſerve what the common Acceptation of the word [ *Riot* ] is in Common Law.
4. To ſhew the contrarieties between *Riots* and peaceable religious *Meetings*.

1. Then, to begin with the Signification of the word.

*Cowell*, a Doctor of the Civil Law, and the King's Profeſſor thereof in the Univerſity of *Cambridge*, ſays, "*The word Riot* (in Latin, *Riotum*) *cometh of* "*the French*, *Rioter*, *that is*, *Rixari* (which ſignifies to *Chide*, *Scold*, *Brawl*, *Strive*, or *Quarrel*.) *Cowell's* Interpreter, *verbo* Riot.

*Lambard* ſays, "Riot I think to be derived from the *French* word *Rioter*, "ſignifying to Scold (or Brawl) becauſe ſuch manner of Acts be commonly "accompanied with words of Brawl. *Eirenarcha l.* 2. *cap.* 5.

*Blunt* ſays, Riot (in French *Riote*) is a *brawling ſcolding Contention*. Gloſſographph. *verbo Riot*.

Judge *Coke* ſays, *Riotum* (a Riot) cometh of the *French* word *Riotter*, that is, *Rixari*; which (as I noted before) ſignifies to *ſcold*, *brawl*, *quarrel*, &c. Inſt. 3. *part cap.* 79. *Tit. Riots.*

*Keeble* ſays, "Riot is of the *French* Riotter, to *ſcold* or *brawl*, becauſe ſuch "manner of Acts be commonly accompanied with words of brawl. Aſſiſtance to Juſtices of the Peace. *p.* 645.

This is enough to ſhew how *unapplicable* the word Riot, in its proper and true ſignification, is to a *peaceable*, *quiet*, *religious Meeting*, which admits not of any ſcolding, brawling, quarrelling, or the like.

2. As to *Statute-Law*, although divers Statutes were antienly made for the ſuppreſſing of Riots, Routs and unlawful Aſſemblies, as 13 *H.* 4. 7. — 2 *H.* 5. 8. and 19 *H.* 7. 13. Yet none of them define or deſcribe what a Riot is. So that I find nothing in the Statute-Law will add Light to this Inquiry; and therefore we muſt have recourſe to the Common-Law, and obſerve,

3. What the Common Acceptation of the word [*Riot*] is in the Common Law.

*Cowell* ſays, It ſignifies in our Common Law, *the forcible doing of an unlawful act by three or more Perſons aſſembled together for that purpoſe.*

*Cowell's* Interpreter, *verbo Riot. The ſame ſays* Lambard in his *Eirenarcha l.* 2.

c. 5. *The same* says *West*, Part 2. Symbol. Tit. Indictments. *The same* says *R. Blunt* in his *Glossograph. verbo Riot. The same* says *Tho. Blunt* in his Law-Dictionary, *verbo Riot*, *The same* (in effect) says the Book called *Les Termes de le Ley*, *Tit. Riot*, p. 244. And to *the same* purpose speaks *Keeble*, in his Assistance to Justices of the Peace. p. 645.

Thus in short the define a Riot: but in the further opening of it, there are seven things I observe the Law-Books make essential to a Riot; which I will set down severally.

1. The first is the *Number of Persons* engaged in it; which may be any Number *above Two*.

2. The second is, that *there be some fact actually done*. For if three Persons or more should assemble together, and with intent to do such an act as would amount to a Riot: yet *if they do it not*, but depart again without doing any thing, *their so assembling is no Riot*.

"A Riot, says *Lambard*, is thought to be, where three or more persons be "disorderly assembled to commit with force any such unlawful act, **And do** "**accordingly execute the same**. Eirenarcha l. 2. c. 5.

Judge *Coke* says, "Riot in the Common Law signifieth when three or more "**do** any unlawful act, as to beat a Man, *&c.* Instit. 3. Part. c. 79. Tit. Riots.

"A Riot, says *Pulton*, is where three persons or above do assemble them-"selves together to beat or maim a Man, *&c.* **And they do it**. *Pult. de Pace Regis*, *fol.* 25.

*Dalton* says, "Where three persons or more shall come or assemble them-"selves together, to the intent to do any unlawful act, with force or violence, "against the Peace, or to the manifest terror of the People,—*If they* **do exe-**"**cute any such thing indeed**, *then it is a Riot. Country Justice*, *c.* 85. *Tit. Riots. The same says Meriton* in his Guide for Constables p. 93.

"A *Riot*, says *Keeble*, is thought to be, where three or more persons be dis-"orderly assembled to commit with force any unlawful act, *And* **do accor-**"**dingly execute** *the same*. Assist. to Just. p. 645.

*She herd* having shewed what number of Persons, and what kind of unlawful Act can make a Riot, says, "a *Riot* is, where they do not only begin, "and go on, but **finish** their work, or with unlawful Weapons **do** such an unlawful act, Grand Abridgment Part 3. p. 259.

From all which it is evident, that for any number of Persons *barely to assemble* themselves together (though it were with a Riotous intention) is *no Riot*, unless the same persons being so assembled, do commit some such unlawful act as in construction of Law will amount to a Riot (and of what kind that must be, shall be our next Inquiry.) So that, if in a peaceable manner to preach or pray could legally be interpreted a Riotous Act: yet those Meetings which are wholly silent, wherein there is *nothing said*, *nothing done*; or wherein (which is much alike) no proof can be made of anything said or done (and such, it seems

seems was that Meeting, which gave occasion to this discourse) such Meetings to be sure *cannot be Riots*,

3. A third thing is, that the act or deed done must be *not only unlawful*, but *injurious to another*. This appears by the Examples given by the most Eminent Lawyers that have written of this Subject.

Judge *Coke* says, "*A Riot in the Common Law signifieth, when three or more do any unlawful act:* then to explain what he means here by an *unlawful act*, he immediately adds, "*As to beat any man, or to hunt in his Park, Chase or War-*"*ren, or to enter or take possession of another Man's Land, or to cut or destroy his* "*Corn; Grass or other profit.* Institt. 3. p. c. 79. Tit. Riots.

*Shepherd*, having shewed what number of Persons must be present to make a Riot, adds, "*A second thing that* **must** *be in the Case to make up* **any de-**"**gree** *in these Offences,* **must** *be, that the Assembly they go with, or their intent* "*and design must be evil, to do some hurt to Men or that which is theirs:* then instances thus, "*As breach of Inclosures, or Bancks, or Conducts, Parks, Pounds,* "*Houses, Barns, the burning of stacks of Corn, or the like; or to enter into Lands, to* "*beat others, or to carry away their Wives, or the like.* Grand Abridg. 3. part p. 259. Tit. Riots.

*Fitz-herbert* explains the unlawful act which makes a Riot, by these Examples, *viz. To beat or to maim another*, Fitz-h. Office of Just. of Peace, p. 53.

*Lambard* uses these Examples *viz. To beat a Man, or to enter upon a Possession forcibly.* Eirnarcha, lib. 2. c. 5. *The same* are in the Book called Les Terms de la ley. Tit. Riot. p. 244.

*Pulton* says, "*A Riot is where three Persons or more do assemble themselves to-*"*gether to the intent to* **beat** *or* **maim** *a Man, to pull down a house, wall, pale,* "*hedge, or ditch; wrongfully to claim or take Common or way in a ground, to* "**destroy** *any Park, Warren, Dove-house, Pond, Pool, Barn, Mill, or stack of* "*Corn; or to do any other unlawful act, with force and violence, and against the* "*Peace, and they do it.* Pult. de Pace Regis, fol. 25.

*Meriton* says, "*Where three Persons or more shall come and assemble themselves* "*together, to the intent to do any unlawful act, with force or violence, against the* "*Person of another, his Possessions or Goods* (then he instances particulars) *As to* "**kill**, **beat**, *or otherwise to* **hurt**, *or to* **imprison** *a Man; to* **pull down** *a* "*House, Wall, Pale, Hedge, or Ditch; wrongfully to enter upon or into another* "*Man's Possession, House or Lands,* &c. *Or to cut, or take away Corn, Grass,* "*Wood, or other Goods wrongfully; or to hunt unlawfully in any Park or Warren, or* "*to do any other unlawful act (with force or violence) against the peace, or to* "*the manifest terror of the People,—if they do any* **such** *thing in deed, then it* "*is a Riot.* Guide for Constables, p. 92. 93. For this he cites divers Authors, particularly *Dalton*, who gives the self-same Examples of an unlawful Riotous act, and out of whom he seems to have transcribed this verbatim. So that I need not repeat what *Dalton* there says; but shall only observe out of him,

that

that one of the Reasons he gives, why, *If divers do assemble and gather together to play at certain unlawful Games and Sports* (which he mentions) *it is no Riot*, is, because *These Meetings* (says he) *usually are not with any intent to offer or do violence or hurt to the Person, Possessions or Goods of any other.* Dalt. Country Just. c. 85. Tit. Riots.

By all these Instances it is evident, that those *unlawful Acts* which the Common Law takes notice of as *Riots*, are such as are some way or other *injurious* and *hurtful* to the *Persons* or *Possessions* of others: But quiet and peaceable Meetings, for the Worship of God only, are *no ways injurious* or hurtful to the Persons or Possessions of any. So that it is *not every* unlawful Meeting, or Assembly of People forbidden by the Law, that will amount unto a Riot. 'Tis true indeed, every Riot is an unlawful Assembly; but (the Terms are not convertible) *every unlawful Assembly is not a Riot.* Dalton says, *The manner of doing an unlawful Act by an Assembly of People, may be such (and so handled) as that it shall not be punished as a Riot.* Country Just. c. 86. p. 221. And both *Lambard* and *Keeble*, from *Marrow*, assure us, that *an unlawful thing may be so done, as that it cannot be made a Riot.* Eirenarcha, l. 2. c. 5. Assistannce to Just. p. 645. And so says *Shepherd* also, Grand Abridgment 2. part. p. 260.

And to manifest yet further, that by an *unlawful* Act in a riotous sense, the Law Books intend such an Act as is *injurious* or hurtful to the Person or Possessions of another they tell us that unlawful Act which makes a Riot, must be *Malum in se Evil in it self* and of its own nature. This *Dalt.* implies, when he says that to *play at Foot-ball, Bucklers, Bear-baitings, Dancings, Bowls, Cards or Dice, or such like Games or Desports* (which he confesses are unlawful) *is no Riot*, because *they are not Evil in themselves.* Country Just. c. 85. But in the last Edition of *Dalton*; (printed last year, with many considerable Additions by another hand) it is said expressly, "An unlawful Assembly, Riot or Rout, is where three or more "shall gather together, come or meet in one place, to do some unlawful Act "with violence, and *that unlawful act* **must** *be Malum in se*, that is, evil in it self) *and not Malum prohibitum* (not evil forbidden, only.) See the new Edition of *Dalton*'s Country Justice, c. 136. Now if (according to these) that unlawful act which makes a Riot must be *evil in it self*; or injurious, then surely *it cannot possibly* be a Riot for people to assemble peaceably and quietly together to worship God: for certainly no man can harbour a thought, that it is *evil in it self* for Men and Women to worship God, or to assemble together, in a peaceable manner, for that end. And it is manifest that the statute of the 22. *Car.* 2. (commonly called the Conventicle Act) which prohibits those Meetings to greater Numbers, doth not take those Meetings to be *evil in themselves*, because it permits them to lesser Numbers.

4. A fourth thing *essential to a Riot* is **force** or **violence**. So all agree.

*Cowell* says, It signifies in our Common Law, the **forcible** doing of an unlawful Act, *&c.* Cowell's Interpreter, verbo Riot.

*West*

*West* says, A Riot is the **forcible** doing of an unlawful act, *&c.* Symbol. 2 par Tit. Indictments.

*R. Blunt* says, Riot signifies in our Common Law, the **forcible** doing of an unlawful act, *&c.* Glossograph. verbo Riot.

*Tho. Blunt* says, Riot signifies the **forcible** doing an unlawful act, *&c.* Law-Dictionary, verbo Riot.

*Keeble* says, a Riot is thought to be where three or more persons be disorderly assembled to commit **with force** any such unlawful Act, *&c.* Assist. to Just. p. 645.

*Lambard* not only defines a Riot to be, where three or more persons be disorderly assembled to commit **with force**, any such unlawful act; but at his entrance upon the Discourse of Riots, having premised that many Contentions may be without any apparent shew of Assembly against the Peace; *I will leave them*, says he, *and resort to those* **other** *that the Commission saith to be done* **vi armata**; and thereupon he proceeds to describe Riots, Routs, *&c.* So that it is plain he lookt upon that act which could make a Riot, to be an act done *vi armata*, with **armed force**, or, as the Phrase is, **with force and Arms**. And therefore, treating of what one Justice may do in the Case of a Riot, he says, *He alone (or with his Servant) may go to the place, and such as he findeth riotously assembled and* **Armed**, *he may arrest ---- and may take their* **Weapons** *from them.* Eirenarcha, l. 2. c. 5. Tit. Riots. Which implies that they must be *Armed*, they must have *Weapons*, that commit a Riot.

But *Shepherd* speaks full and plain: For describing an unlawful Assemby, Rout and Riot, he says, "Rout is, where being thus met they move, *being* "*weaponed*, from the place of their Meeting towards the place where they pre- "pose to do this act, in a *turbulent* way to effect it, *&c.* But a Riot, he says, is "where they not only begin and go on, but with *Unlawful Weapons* finish or do such an unlawful Act. Grand Abridgment 3. part. p. 259.

*Dalton* says expressly, *It seemeth it* **can be no Riot**, *except there be an intent precedent to do some unlawful Act, and* **with violence** *or* **force**, Count. Just. ch. 85. Thus all concur, that that Act which makes, or can be made a Riot, must be a *forcible Act*, or an Act done *with force*. So that **No Force, No Riot**. And therefore, seeing our peaceable, quiet, religious Meetings are *wholly free from force and violence*, it follows that they are also *free from Riot*.

Now that none may err through misapprehension that the words [*vi armata*, or *with force and Arms*] are words of *Form* only, and not *material* and *essential* to a Riot; let me add what *Lambard* saith thereupon. "Even as the "*Civilians* do handle two sorts of *Force*: of which they call the one *vim*, and "*vim simplicem, privatam; sive quotidianam*; and the other *vim armatam, atro-* "*cem & publicam*, because the first is void of any fearful outrage, and the lat- "ter seemeth to kindle the Coals of Sedition it self: So likewise says he, our "Law taketh knowledge of two manner of *Force*, whereof the one is rather in-

"tellectual

'tellectual than actual, and may therfore be termed, *A Force in the Considera-*
'*tion of Law*, which accounteh all that to be *vis*, which is contrary to *Jus*. But
'the other is *apparent* by the Act it self, which alwaies carrieth some *fearful*
'*Shew*, and matter of *Terror* (or trouble) with it. *Eirenar.* l. 2. c. 4. p. 140. And
therefore (l. 2. c. 5. p. 174.) he explains [*vis armata*] to be that, which doth *bring*
*manifest Terror unto the Subject*. And as he makes that which he calls an in-
tellectual force, or a force in the consideration of Law, to relate to Suits and
Actions at Law for Trespasses, *&c.* So (in his first Book, c. 2. p. 7.) he declares,
It is *no part* of the Justices Office to forbid lawful Suits and Controversies, but to
suppress *injurious force and violence moved against the Person, his Goods or Possessions*
And in p. 10. he saies, 'I conclude that this *furious Gesture* and *beastly force of body*
'*or hands* (and not every Contention, Suit and disagreement of minds) *is the*
'*proper subject and matter about which the Office of the Justices of the Peace is to be*
'*exercised*. Now since a Riot is the proper Subject and matter about which the
Office of Justices of the Peace is to be exercised, it follows that that *vis armata*,
*that* force and Arms, which is of necessity to the making of a Riot, must needs
be *this furious Gesture* this *beastly* force of *body* and *hands* (as *Lambard* calls it)
which brings *terror to the People*, and which *our Meetings are free from*. *Dalton*
also, undertaking to shew what the Law accounteth to be *force*, and what *wea-*
*pons* be offensive in these and the like cases, saies, 'To have Harness, Guns,
'Bows and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitch-
'forks, or Swords not usually born by the Parties, shall be said to be *vis ar-*
'*mata*. And so to use casting of Stones, hot Coals, scalding Water or Lead,
'*&c.* be said to be *vis armata*; *Country Just.* c. 77. p. 203.

5 A Fifth thing is the *previous Intent* of the Persons assembled. Both *Lam-*
*bard* and *Keeble* tell us, *The intention and purpose of those that be assembled is wor-*
*thy the weighing*. And they instance some Cases of persons that being met at
an Ale-house, a Christmas-Dinner, or a Church-Ale, fell together by the Ears
and fought, yet this was no Riot (but a sudden Affray only) because *they did*
*not come thither with intention to fight*; Eiren. l. 2. c. 5. Assist. to Just. Tit. Riots.

*Shepherd* says, 'If many come together *unarmed*, they know not why them-
'selves; this is no offence punishable, unless it can be known, that they came
'to some *Evil Intent*, or that they do *miscarry themselves* in some *Evil Act*.
Now, since we come together *unarmed*, not to any *Evil Intent*, but to a *very*
*good* Intent, namely, to serve and worship the true God, in a peaceable man-
ner, and do *not miscarry* our selves in any *Evil Act* in our Meeting: Surely (if
*Shepherd* might be Judge) *Our Meetings are not Riots*.

*Dalton* speaks home; *It seemeth*, says he, **it can be no Riot**, *except there*
*be an* **intent precedent** *to do some unlawful Act, and with violence and force*;
Count. Just. ch. 85. Now the intent of our Meetings being *only* to serve and
worship God, and that *not* with violence or force, but in peace and quietness, it
seemeth such Meetings *cannot be Riots*.

6. A

6. A Sixth thing *essential to a Riot* is, *Breach of the Peace*. The Peace *must* be broken, or it is *no Riot*. In this all agree. And least any doubt should arise what is intended by, or what will amount to a Breach of the Peace in this Case, the Law-Books will explain it.

*Lambard* saies, 'Two special things there are, that be common and **must** 'concur, both in the unlawful Assembly, Rout and Riot; the one that three 'persons (at the least) be gathered together:——the other, that they being 'together, do breed some *apparent disturbance* of the Peace, either by significa-'tion of *Speech*, *Shew* of *Armour*, *turbulent Gesture*, or *actual* and *express vio-'lence*; so that either the peaceable sort of men be *unquieted* and *feared* by the 'fact, or the lighter sort and busie-bodies be imboldened by the Example; *Eiren.* l. 2. ch. 5.

*Cowell*, following him saies, 'Two things are common both to Riot, Rout 'and unlawful Assembly; the one, that three persons at the least be gathered 'together: the other *that they being together do breed disturbance of the Peace*; (How?) either by signification of *Speech*, shew of *Armour*, *Turbulent Gesture*, or *actual* and *express Violence*; Cowel's *Interp. verbo Riot.*

*Shepherd* saies, 'These two things are *common* both to the Riot, and the Rout, 'and unlawful Assembly. There *must* be three persons at the least gathered 'together in it: the other, that *being together*, *they do breed disturbance of the Peace*, either by signification of *Speech*, shew of *Armour*, *Turbulent Gesture*, or actual and express *Violence*, &c. *Grand Abridgment*, p. 3. p. 259.

*Dalton* saies, 'As there must necessarily be three persons at the least, assem-'bled together, to make a Riot, *&c.* So there being together, and *their* 'demeanour **must** *be such*, as shall or may breed some *apparent disturbance* of 'the *Peace*; either by *threatning* Speeches, *Turbulent Gesture*, shew of *Armour*, 'or *actual* force or violence (to the *terrour* and *fearing* of the peaceable sort of 'People, or to the emboldening and stirring up of such as are busy-headed, and 'of evil disposition, by such fact) **or else it can be no Riot**, *&c. Country Just.* 'c. 87.

*Tho. Blunt* saies, 'Two things are *common* both to Rout, Riot and unlawful 'Assembly; The one, that three persons at least be gathered together: The 'other, that they being together *do disturb the Peace*, either by *words*, shew of *Arms*, *Turbulent Gesture*, or *actual violence*; Law-Diction. verbo Rout.

*Keeble* saies, 'Two *special things* there are that be common, and **must con-'cur** both in the unlawful Assembly, Rout and Riot. 1. That three persons 'at the least be gathered together;——2. That *there being together*, *do breed* 'some *apparent disturbance of the Peace*, either by signification of *Speech*, shew 'of *Armour*, *Turbulent Gesture*, or *actual and express violence*. So that either 'the peaceable sort of men be *unquieted* and *feared* by the Fact, or the lighter 'sort and busie-bodies be imboldened by the Example; *Assist. to Just. p.* 645. 'And saies he, *p.* 646. (And so saies *Lambard* also, *Eiren.* l. 2. c. 5.) *if many do*

 *meet*

*meet to play at Bowls, Tables, or Cards* (which yet are unlawful Games forbidden by the Statute of 33 *H.* 8. 9.) *and do use no misbehaviour against the Peace, they are not punishable in this degree.* How much *less* then are they punishable in this degree, (*viz.* of Riot) who meet together for a good and *godly end* only, to worship God, and *use no misbehaviour against the Peace!*

By all these Testimonies it appears, both that to the making of a Riot there must of necessity be a *breach of the Peace*; and also wherein that Breach of the Peace consists, namely, in *threatning Speeches, shew of Armour, turbulent Gesture*, or *actual violence.* And that this is indeed the true and proper meaning of the words [*Breach of the Peace*] might be further confirmed by other evidences out of *Lambard*'s Eiren. l. 1. c. 2. and l. 2. c. 3. But most plainly out of *Dalton*, who having defined Peace (in a legal sense) to be *An Abstinence from actual and injurious force and offer of violence*, saies, *The breach of this Peace seeneth to be any injurious force or violence moved against the person of another, his Goods, Lands, or other possessions, whether it be by threatning words, or by furious Gesture, or force of the body, or any other force used* in terrorem; *Count. Just. c.* 3. But well known it is to all, that know our Meetings, that *no* injurious force or violence is moved by us *in our Meetings* against the Person, Goods, Lands, or Possessions of any: So that *the Peace is not broken by us* in our Meetings, and consequently *our Meetings are not Riots.*

7. The Seventh and last thing *essential* to a Riot is, *Terrour to the People*; that is, That the thing done be either of it self, and in its own nature so *dreadful*, or performed in such a *formidable* and *affrighting* manner, that the People are thereby *struck with terrour.*

*Lambard*, proceeding to speak particularly of Riots, Routs, *&c.* saies, 'I 'will leave those contentions which may be without any apparent shew of 'Assembly against the Peace, and resort to those *other* that the Commission 'saith to be done *vi armata*, and *that do bring* **manifest Terrour** *unto the Sub-* 'ject. And a little after, he mentions the use of Harnesses on *Midsummer-night* in *London*, or on *May-day* in the Country, 'Which (being for sport only) is, saies he, '*no such offence* (that is, no Riot) *seeing no Terrour followeth of it:* "*And*, saies he, *the words* **In terrorem populi** *seem to be* **material** *in an Indictment of this kind*; Eiren. l. 2. c. 5.

*Dalton* saies, 'An Assembly of an hundred persons or more (yea though they be in Armour) yet *if it be not* in terrorem populi, and were assembled '*without any intent to break the Peace*, it is *not prohibited* by any of these Statues (*viz.* which were made against Riots, *&c.*) *nor unlawful.* And he gives the same instance *Lambard* gave of the Assembly of People, and their use of Harness upon *Midsummer-night* in *London*, 'Which (saies he) being only for dis-'port, is lawful; and though it be with a great Assembly of People, and in *Ar-'mour*, yet it being *neither* in terrorem populi, *nor to do any Act with force and* '*violence against the Peace*, it is lawful, saith *Dalton*, Coun. Just. c. 85. And he shews

ſhews further (ch. 87.) 'That if divers in a Company ſhall go, on a lawful 'occaſion, armed and in harneſs, *to the terrour of the people*, though they have 'no intent to fight, or to commit a Riot, yet *this is a Rout* by the manner of 'their going. But on the other hand, if they had gone in privy Coats of Plate, 'Shirts of Mail, or the like, to the intent to defend themſelves from ſome *Ad-'verſary*, *This* (ſaies he) *ſeems not punishable within theſe Statutes*; and the 'Reaſon he gives is, For *that there is nothing openly done* in terrorem populi, *to the terrour of the People*

*Keeble* (treating of Riots, and reciting the words of *Lambard* though he cites *Crompton* for the Author) ſaies, to uſe Horns on *Midſummer-night* in *London*, or 'on *May-day* in the Country, for ſport only, *is no ſuch offence* (that is, is no Riot) 'ſeeing *no terrour followeth it*; *and the words* [in terrorem populi] *ſeem*, ſaies he *to be material in an Indictment of this kind.* Aſſiſt. to Juſt. p. 646. With *Keeble's* Judgment I chuſe to cloſe this point, both as he is the laſt (ſo far as I know) that hath written on this Subject, and for that his Book hath the Approbation of all the twelve Judges

Many other Authors I could have quoted on this Subject, & ſome too of great Name, as *Marrow*, *Kitchin*, *Brook*, *Crompton*, &c. whom I find cited by others to this purpoſe; but not having read theſe Authors my ſelf, I forbear uſing them, that I might not rely on any authority taken up at ſecond hand.

Thus having gone through the ſeveral parts of a Riot, according to the Diſtribution premiſed, I take a Riot, in ſhort to be this. When *three* perſons, or more, *are aſſembled together* in Arms, with a *fore-intent* and purpoſe to do ſuch an *unlawful act*, as is both *evil in it ſelf*, and hurtful to another, either in perſon, or eſtate; and *do it* in a *forcible manner*, to the *apparent Breach* or *diſturbance* of the *Peace*, either by *threatning words*, *ſhew* of *Armour*, *turbulent Geſture*, or *open violence*, and to the *manifeſt terrour of the People.*

4. Now becauſe (according to the Rule, *Contraria juxta ſe poſita magis eluceſcunt*, i. e.) when Contraries are ſet one by another, their Contrarieties do the more manifeſtly appear, I will briefly ſet forth the Contrarieties between Riots and peaceable Religious Meetings, by oppoſing our Meetings to Riots, through the ſeveral particulars before mentioned.

And firſt as to *number of Perſons*. In a Riot (if the fact be ſuch as the Law accounts Riotous) any number of Perſons *above two* is ſufficient to commit a Riot.

But in thoſe Meetings for the exerciſe of Religion which are forbidden by the Conventicle-act, it is not unlawful even by that Act for *four perſons beſides the Family* (how numerous ſo ever that be) to aſſemble together. So that even in point of numbers there is a *material difference* between Riots and Religious Meetings: which ſhews, the Parliament that gave liberty to *four perſons* beſides the family to meet, did not underſtand thoſe Meetings to be Riots. The Conventicle-act doth not permit Riots: But the Conventicle-act doth permit

Religious Meetings to such Numbers as ( as if those Meetings were of a Riotous nature ) are sufficient to mak a Riot; Therefore *such Meetings are not Riots.*

2. In a Riot there must of necessity be some *overt act*, some *deed done*, some *fact committed* by the persons assembled (which may come under the Cognizance of outward evidence ) more than their *bare assembling* together, else *it cannot be a Riot.*

But (as in none of our Meetings there is any Riotous act, ( so ) in such of our Meetings as are wholly silent, there is *no* overt act at all, *no* deed done, *no* fact committed by any of the persons assembled (which may come under the Cognizance of outward evidence ) more than their *bare assembling*: therefore *such Meetings cannot be Riots.*

3. In Riots, the fact done must be *not only* unlawful, but *injurious* or *hurtful* to another, either in *person* or *estate.*

But our Meetings (if at all unlawful ) are *no way injurious* or *hurtful* to any, either in *person* or *estate*: therefore *our Meetings are no Riots.*

4. That Act which makes a Riot must be done **vi armata**, with *force* and *arms*, or in a *forcible* manner.

But our Meetings are *not held*, nor is there any thing done by us in them, **vi armata**, with *force* and *arms*, or in a *forcible* manner: therefore *our Meetings are not Riots.*

5. To make a Riot, there must be a *previous intent* in the persons assembled, to do some such unlawful act as is evil in it self and hurtful to others, and that with force.

But in our Meetings, we have *no previous intent* to do any such unlawful act, as is evil in it self and hurtful to others; nor have we any other intent at all, than sincerely and really to serve and worship God, and that without force or violence: therefore *our Meetings are not Riots.*

6. It is not a Riot, unless the *Peace be broken* or disturbed by the persons assembled, either by *threatning speeches*, shew of *Armour*, *Turbulent Gesture*, or *open violence.*

But in our Meetings, the *Peace is never broken* nor disturbed *by us*, we give *no threatning speeches*; we shew *no armour* (nor have any to shew) we use *no Turbulent Gestures*; *nor* do we *offer violence* to any: therefore *our Meetings are not Riots.*

7. It is not a Riot, except it be done with *Terrour to the People.* But our Meetings are *not held with Terrour to the People*: *therefore our Meetings are not Riots.*

How truly I have stated the Case, on the one hand, with respect to Riots, the many Quotations in the fore-going Discourse will shew. How true an account, on the other hand, I have given of our Meetings, the whole Nation (and all Nations wherein we have Meetings) may judg. Upon the whole, my request is, that all, both Justices and Jurors, who are or shall be concerned in this or the like Case, will seriously weigh the matter, and not *strain* the Law beyond

beyond its due Extent. *To oppress any by colour of Law, is the greatest abuse of Law.* I intreat Grand-Juries therefore to *regard Justice, to regard their Oath.* They are sworn expressly to *examine diligently, and true presentment make,* &c. They are sworn expressly, to *present the Truth, the whole Truth, and* **nothing but** *the Truth, to the* **best** *of their knowledge.* Now that they may not break their Oath, but that they may *true* Presentment make, that they may present *nothing but* the Truth, that they may not present a *Falshood* for *Truth,* I intreat them again and again to *examine diligently* both what Riots are, and what our Meetings are. And if upon such *diligent Examination* they find any of those *material* and *essential Differences* between our Meetings and Riots (which I have before observed) that then they will, like just Men and Christians, keep themselves clear from making *false* Presentments instead of *True,* from writing *Billa vera* (a *true Bill*) upon that Bill (and delivering it in as such upon their Oaths) which perhaps in three parts of four is utterly and apparently *false*: The like request I make to petit Juries in the like Case, who are sworn *well and truly to try, and true deliverance make,* &c. *according to their Evidence.* Which Evidence ought to be of *good fame*: for it's a Maxim, *Justitia non potest cum Scelerato Commercium habere*; Justice can have no Commerce with a wicked graceless person: And *Turpes a tribunalibus arcentur.* Vile persons ought to be rejected by Courts of Judicature. And therefore witnesses are required to be not only *Legales,* Lawful men, but *Probi,* virtuous and good men, men of approved honesty, from such Witnesses the Jury may expect (and ought to have before they find any man guilty) a plain, full and *clear* evidence of *every* material part of the charge laid against him; and let me add, of all such Circumstances also, as may any way *aggravate the Offence*: for nothing that may endamage the accused party should be taken upon Presumption or supposition, nor without plain and clear proof. The witnesses deposition is therefore called evidence, because it makes the Truth and falsehood of the charge evident and plain: and saies *Coke, Probationes debent esse evidentes & perspicuæ,* proofs ought to be evident and clear. O that all men concerned in these and such like Cases, would so *conscienciously* and considerately discharge the duty of their Offices, that with *comfort* they might give account thereof to the *Great* Judge at the *last* day! For why should any draw upon their own heads the guilt of Perjury, and the vindictive cry of oppressed Innocents;

But if there be any that are eager and desirous in their minds to have our Meetings punished as Riots; Let me intreat them also to consider, How *dishonourable* a Reflection it would be both to the *Government,* and to the *Religion* established thereby, If peaceable, quiet, Religious Meetings, conscienciously holden, only and alone for the Worship and Service of God (wherein *no Evil* is either acted or intended, *no violence* or *force* used, *no breach* of the *peace* made, *no terrour* given: but an innocent, meek, passive, and truly Christian behaviour and deportment shewn) should be judicially declared *Riots,* and punished

ſhed as ſuch: when at the ſame time our Law-Books aſſures us, that not only *playing* at Bowls, Dice, Cards, *&c.* But even the Numerous Aſſemblies that frequent thoſe more Clamorous, Rude, Impetuous and Boiſterous ſports of *Dancings*, *Foot-ball-playing*, *Bear-baitings*, *Bucklers* or *Fencings*, and ſuch like, are *not* Riots, Routs, nor unlawful Aſſemblies, ſhall ſuch *vain* and *Ruffianly* ſports wherein ſo much *Rudeneſs*, *diſorder* and *Prophaneneſs* is committed (and which ſeem to be ſo near of Complexion to Riots) be declared to be *no Riots*: and ſhall *peaceable* and *Religious Meetings*, wherein only *God is worſhipped* (and which have *no* ſhew nor appearance of Riots in them) be condemned *for Riots!* **God forbid.**

If any ſhould think our Meetings may be Riots, becauſe we ſometimes meet in the open Streets or in the High-way; Let ſuch conſider, that we do not meet in the Streets or High-waies by *Choice*, but by *Conſtraint*. We come not with *intent* to meet in the Streets or High-waies, but in our Meeting-houſes. But where we are *ſhut out* and *kept out* of our Meeting-Houſes, we are *neceſſitated* to meet abroad. And yet there alſo we demean out ſelves *peaceably* and *quietly*, not offering violence or injury to any, nor coming with any Intent ſo to do. And if any ſhould apprehend, that our not departing immediately upon a Conſtable's making Proclamation, doth make our Meetings Riots, it may not be amiſs for ſuch to enquire, whether there be any Statute *in force*, that doth impower Conſtables, and other inferiour Officers, to make ſuch Proclamation, and requires the perſons aſſembled forthwith to depart thereupon. The Act made in the firſt year of Q. *Mary*, c. 12 (which appointed the making of Proclamation in ſome Caſes of another nature, though not by a Conſtable, ſo far as I obſerve) being but a temporary Act continued by Q. *Eliz.* (in the firſt year of her Reign, c. 16.) to the end of the next Parliament after her death is long ſince *expired*, or diſcontinued, as *Pulton*, *Dalton* and *Keeble* declares. However if it were in force, it would not reach us or our Meetings, which are *not guilty* of any of *thoſe Offences*, againſt which that Act was made.

Laſtly, I deſire the Reader to obſerve, that the difference between a Riot, Rout and unlawful Aſſembly, is only in the execution or Non-Execution of that Act, which, being done, makes a Riot. In all things elſe they are alike, there muſt be the *ſame number* of Perſons to make an *unlawful Aſſembly*, as to make a *Riot*. There muſt be the *ſame previous intent* in the one as in the other; the fact intended to be done in an *unlawful Aſſembly*, muſt be of the *ſame* nature with that which is done in a *Riot*, that is, it muſt be evil in it ſelf and injurious to another, as well in the one as in the other. There muſt be *vis armata*, *force and arms* to the making of an *unlawful Aſſembly*, as well as to the making of a *Riot*. There muſt be *breach of the peace* to make an *unlawful Aſſembly*, as well as to make a *Riot*. There muſt be *Terrour to the people* to make an *unlawful Aſſembly*, as well as to make a *Riot*. All the odds is, that if the Perſons

ſo

ſo aſſembled, in ſuch forcible manner, to the Breach of the Peace and terrour of the People, do *not actually perform* that unlawful act, which is evil in it ſelf and injurious to the perſon, or Poſſeſſions of another, but depart again *without proceeding to do it*, then it is only an *unlawful Aſſembly*; whereas if they indeed *do it*, then it is a *Riot*. And a Rout is a degree between both, when after the Perſons are ſo aſſembled, there is ſome *Progreſs* made, they ride, go, or move forward, towards the Execution of ſuch unlawful and injurious Act, and yet do not actually execute it.

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# POSTSCRIPT.

SInce I have undertaken to diſcourſe of the Nature of *Riots*, and there is ſome mention in Holy *Scripture* of *Rioting*, &c. it will not be amiſs to ſhew what *Rioting* is in *Scripture*-ſence alſo.

The Prodigal *Son* (in the Parable, *Luke* 15. 13,) is ſaid to have waſted his ſubſtance with *Riotous living* [ζῶν ἀσώτως] living *Profuſely and diſſolutely*, as *Paſor* explains it. The ſame word (in the ſubſtantive) is uſed, *Epheſ.* 5. 18. and rendred, *Exceſs*; which *Beza* expounds to be, *Omnis Profuſio, eaque ſumma cum Turpitudine conjuncta*; All manner of Profuſeneſs, and that joyned with the greateſt Filthineſs. It is uſed again, *Tit.* 1. 6. where it is required that the Children of ſuch as were to be ordained Elders, ſhould be [μὴ ἐν κατηγορίᾳ ἀσωτίας] *not accuſed of Riot*, that is, of leading a *diſſolute* and *profuſe* life. The ſame word is uſed again, 1 *Pet.* 4. 4. and very well explained by the verſe foregoing. For the Apoſtle having ſaid (verſe 3.) *The time paſt of our lives may ſuffice us to have wrought the will of the Gentiles, when we walked in Laſciviouſneſs, Luſts, Exceſs of Wine, Revellings, Banquetings and abominable Idolatries*; adds verſe 4.) *Wherein they* (the Gentiles, who yet walked in ſuch things) *think it ſtrange, that you run not with them to the ſame Exceſs of* Riot, *viz.* to walk in *Laſciviouſneſs, Luſts, Exceſs of Wine, Revellings, Banquetings*, &c. So that it is clear, that by *Riot* here (ver. 4.) he means the *Laſciviouſneſs, Luſts, Exceſs of Wine, Revellings, Banquetings* and *abominable Idolatries* (which he had newly mentioned Verſe 3.) and which the Chriſtians, it ſeems, before Converſion, having walked with the Gentiles in, were now after their Converſion to Chriſtianity, thought ſtrangely of, and blaſphemed. but the Gentiles, for not running on ſtill in the ſame. Theſe are of the Places (ſo far as I obſerve) wherein Ασωτία is Read in the New Teſtament; 'It ſignifies, ſaies *Leigh*, Two Things: 1. *Exceſs* in *Expences*, oppoſite to *Frugality*. 2. *Exceſs* in *Delights* (whether it be in *Meats* or *Drinks*, or the like) oppoſite unto *Temperance*: and it ſignifieth theſe *Vices* in an *Extremity*. Or (as he gives it from another) Ασωτία that is, *Prodigality*, is taken in a twofold ſence: either properly, and then it ſignifies that *Vice*, whereby any one keeps not his Eſtate, Wealth, or Money; but ſquanders it away lightly and uprofitably upon any thing, without any apparent advantage to himſelf or others. Or Improperly, and then it ſignifies *Luxury*, by which we *laviſhly waſte* our Eſtates upon our *Pleaſures* and *Luſts*, upon *Plays. Feaſts, Exceſs* of *Apparel*. &c.

*Carmel. a Lapide* ſaies, Ασωτία ſignifies, 1. *Surfeiting* by too much Eating and Drinking, *Exceſs, Laſcivioufneſs*. 2. *Luxury* and *Luſt*. *Zanchy* ſaies, It ſignifies *Riotous Exceſs* and *Profuſeneſs* joyn'd with the *greateſt Villany*. This, and more of this kind, ſee in *Leigh*'s *Crit. Sacra*. which ſufficiently ſhews what kind of thing *Riot* was in the Apoſtles daies.

Mention

Mention also we have of *Rioting*, in *Rom.* 13. 13. *Let us* (saies the Apostle) *walk honestly* (or decently, εὐσχημόνως) *as in the day; not in Rioting and Drunkenness, not in Chambering and Wantonness, not in strife and envying. Rioting* here may well be understood by its Companions it is associated with, *viz. Drunkenness, Chambering, Wantonness, Strife.* The word here used for Rioting is κῶμος, which in *Gal.* 5, 21. and 1 *Pet.* 4. 3. is rendred *Revelling.* Nor is it elsewhere used in the New Testament, that I remember. In Latin it is turned *Commessatio*, which (saies *Leigh*) signifies *Excess of Belly-chear in Riotous Feasting.* And, he saies, St. *Ambrose* expounds it, *Luxurious Feasting and Banqueting, wherein* (saies he) *men take liberty to all Lascivious and Riotous behaviour*; Crit. sacra.

There is one place more in the New Testament, where we read the word *Riot*, and that is in 2 *Pet.* 2. 13. where the Apostle speaks of some, who *counted it pleasure to Riot in the day time.* The Greek word there used is [τρυφὴν] which signifies *Excess of Pleasures* and *effeminating Delicacies.* It is used in the same sense, *Luke* 7. 25. and *James* 5. 5. in which last place it is joyned with a word that signifies to *live wantonly.* (*Ye have lived in Pleasure on the Earth, and been wanton* [ἐσπαταλήσατε] *ye have nourished your hearts, as in a day of slaughter; ye have condemned and killed the Just*, saith the Apostle *James*) a word not elsewhere used in the New Testament, save in 1 *Tim.* 5. 6. where we read, *She that liveth in Pleasure* [Ἡ σπαταλῶσα] *is dead while she liveth.* These are the *Pleasures* the Apostle *Peter* called *Riot.* And this is all I remember to have read of *Riot* and *Rioting* in the New Testament.

In the Old Testament, I meet with it but twice, *Prov.* 23. 20. *Be not among Wine-bibbers; amongst Riotous Eaters of Flesh.* Chap. 28. 7. *He that is a Companion of Riotous persons, shameth his Father.* In the Margin, He that *feedeth Gluttons*, &c. There is also a Marginal Reference to Chap. 29. 3. where it is said, *He that keepeth Company with Harlots spendeth his substance.* In Latin these Texts are turned by *Hierom, Pagnine, Montanus, Tremellius* and *Junius*, by the words *Commessatio, Commessator*, and *Comedo* (an old obsolete word) all signifying *Gluttonous Gourmandizing*, or *inordinate Eating and Drinking*, whereby men do *Riotously waste* and *consume* their Estates. Let this suffice, without particular Application, to shew what *Rioting* and *Rioters* are in *Scripture*-sense.

THE END.

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